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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/821,363

04/09/2004

Marijan Elizabeth Grogoza

ASP 2-001

1213

7590

09/09/2005

Jerry K. Mueller, Jr.  
Mueller and Smith, LPA  
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EXAMINER

SHAW, ELIZABETH ANNE

ART UNIT

PAPER NUMBER

3644

DATE MAILED: 09/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/821,363	GROGOZA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Elizabeth A. Shaw	3644	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 4, 25, 27 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Longtin (6,574,948)

The applied reference has a common inventor with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Longtin shows an equine safety garment for a horse to wear during hunting season and at night comprising an equine garment 12, 16 made of highly visible mesh fabric, col. 4, lines 21-26, specifically in “blaze orange” and has highly visible reflective strips 28 affixed thereto.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Longtin in view of Miller et al (6,267,482). Miller et al show a garment 10 having reflective strips 14 and lights 16. With respect to claims 2 and 26, to use the lights of Miller et al with the garment of Longtin would have been obvious to one skilled in the art in order to increase visibility of the wearer by not needing to rely on reflected light to illuminate the wearer.

Claims 5-13, 15-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over White, Jr. (6,050,068) in view of Longtin (6,574,948). White, Jr. shows a turn out horse fly mask 20 composed of mesh fabric having a rear edge 50 behind the horse's ears to a lower edge 118 at the horse's cheekbone and having a mesh pleated area 74 to create a stand-up area away from the horse's eyes and an ear accommodating area 110, 114 for the horse's ears 30. The rear 50 and lower edges 118 terminating about the lower jaw 44 and are releasably fastenable 58 thereat, the edges being covered by fabric webbing. The mesh is made of polyester coated with vinyl. Longtin teaches the use of a high visibility colored fabric and the use of reflective strips on the horse's head covering garment 12, the garment having fabric to fit over the ears of the horse. With respect to claims 5 and 15, to use the coloration and the reflective strips of Longtin on

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the horse mask of White, Jr. would have been obvious to one skilled in the art as a replacement of functional equivalents.

Claims 14 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over White, Jr. in view of Longtin as applied to claim 5 above and further in view of Miller et al. With respect to claims 14 and 24, to use the lights of Miller et al with the garment of the combination of White, Jr. and Longtin would have been obvious to one skilled in the art in order to increase visibility of the wearer by not needing to rely on reflected light to illuminate the wearer.

Claims 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Longtin. With respect to claims 29-31, to use a specific type of fabric such as vinyl, since none is specified, would have been obvious to one skilled in the art in order to vary the use of the garment or to allow the garment to be worn in various environmental conditions.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-31 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,574,948. Although the conflicting claims are not identical, they are not patentably distinct from each other because Longtin shows an equine safety garment for a horse made of high visibility mesh in "blaze orange" and having reflective strips affixed thereto.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Included for further reference are: Rapisarda (5,649,755), McMahon (6,128,891), Hung (6,216,642), Bayer (6,345,393), Golle et al (6,769,138) and Hsieh (2002/0122316).

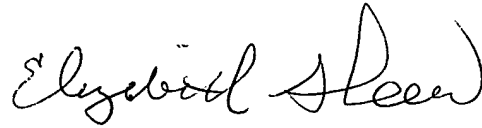
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth A. Shaw whose telephone number is 571-272-6908. The examiner can normally be reached on M-Th 10:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Elizabeth A. Shaw  
Examiner  
Art Unit 3644

August 25, 2005



TERI PHAM LUU  
SUPERVISORY  
PRIMARY EXAMINER